IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1900 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LIFE INSURANCE CORPORATION OF INDIA

Versus

VASANT N MODI

Appearance:

MR AK CLERK for Petitioner

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 28/06/2001

C.A.V. JUDGEMENT

Rule. Mr.Y.S.Lakhani waives service of Rule.

1 Life Insurance Corporation of India petitioner, original defendant No.1 has filed this Revision

Application under Section 115 of the Code of Civil Procedure challenging the judgment and order dated 26th November, 1999 passed by the City Civil Court, at Ahmedabad below Ex.113 in Civil Suit No.12 of 1998. The learned Judge has ordered that the petitioner original defendant No.1 to produce the documents narrated in paragraph nos.3(a), 3(c), 3(d), 3(f) and 3(g) of this application within 10 days. As regards the documents narrated in para-3(g) is concerned, if any fee is required to be paid, then the plaintiff is ordered to deposit the same on informing by the defendant No.1 to that effect.

2 The facts giving rise to this application are as under :-

2:1 Shri Vasant N. Modi - respondent No.1 herein original plaintiff was an employee of Life Insurance Corporation of India - defendant No.1 appellant herein. The petitioner had terminated service of respondent No.1.

3 Being aggrieved and dissatisfied with the said dismissal order, the plaintiff filed a Civil Suit No.12 of 1998 before the City Civil Court, at Ahmdabad.

4 During the pendency of the suit, the plaintiff filed an application Ex.113 before the trial Court for production of certain documents. According to the plaintiff, the said documents are relevant for deciding and disposing the matter between the plaintiff and defendant No.1. The defendant No.1 - petitioner herein filed the reply at Ex.119 to the said application in this behalf.

5 It was contended before the trial Court on behalf of the plaintiff that there is a deposition of defendant no.1's witness recorded below Ex.91. The learned advocate for the plaintiff has argued that perusing the said deposition at Ex.91, the documents sought for by this suit below Ex.26 and cross examination of the said witness at Ex.91 is still continued.

6 Before the trial Court, the learned advocate for the defendant No.1 has vehemently resisted and argued this application and contended that this application is filed only with a view prolong the hearing of this case. It was stated that the plaintiff has submitted this application at the very late stage when the deposition of defendant no.1's witness had been practically over an looking to the nature of the suit, the documents sought for are irrelevant. Under Order-11 of the Code of Civil

Procedure, one can ask for the inspection and production of documents at the initial stage and the plaintiff of this suit is trying to create evidence and the Court should not enlarge the scope of production, otherwise, there would be no end to it and hence, this application may be dismissed.

7 The learned Judge, City Civil Court, at Ahmedabad by his judgment and order dated 26th November, 1999, after considering the averments made by the learned advocate for the plaintiff and defendant please to direct the defendant No.1 to produce the documents narrated in paragraph nos.3(a), 3(c), 3(d), 3(f) and 3(g) of this application within 10 days and as per the documents narrated in para 3(g) is concerned, if any fee is required to be paid, then the plaintiff is ordered to deposit the same on informing by the defendant No.1.

8 Mr.A. K. Clerk, learned advocate for the petitioner - Life Insurance Corporation of India has contended before this Court that the documents sought for by the respondent herein are not pertinence or material for the purpose of deciding the controversy raised in the suit. The learned counsel for the petitioner has further contended that the trial Court erred in ignoring that the respondent herein at earlier filed a Civil Revision Application against the order of the trial Court dated 24th June, 1999 below Ex.96 in Civil Suit No.12 of 1998 which was rejected by this Court by the order dated 7th October, 1999 in C.R.A. No.1049 of 1999. He has submitted that the application Ex.96 also the respondent herein had tried to produce certain documents which were not allowed by the trial Court by the order dated 24th June, 1999 which was confirmed by this Court by the order dated 24th June, 1999 which was confirmed by this Court by the order dated 7th October, 1999. He has also produced the copy of the said order of this Court (Coram : Mr.Justice Kundan Singh) dated 7th October, 1999. This Court has observed in para-(4) are as under :-

> "The learned counsel for the petitioner could not point out any relevance nor any satisfactory explanation for not filing those documents at the relevant time. The learned advocate for the petitioner also could not make on the case that the Court below has committed any jurisdictional error or material irregularity causing grave injustice to the petitioner. As such, I do not find any justifiable reason to interfere with the impugned order in exercise of revisional jurisdiction under Section 115 of the Civil

Procedure Code. Accordingly, this Revision Application is dismissed on limine. Notice is discharged. Ad-interim relief stand vacated."

8:1 The learned advocate for the petitioner has submitted further that Order-11, Rule-12 should be considered for judging the relevancy of documents. This is particularly, so when specific documents are sought to be discovered by the party. The learned advocate has relied upon the judgment in the case of Union Bank of India v. Hemantlal R. Patel, AIR 1991 Guj. 113. He has also submitted that the object of discovery is ; (a) to elicit admissions, (b) to obviate the necessity to produce lengthy evidence and (c) to expedite disposal. He has also submitted that when the suit was filed by the plaintiff along with the plaint, all the requisite documents on which the plaintiff had relied and copies thereof had also been filed for being given to the defendants. It was clear that there was no specific document available with the plaintiff relating to the controversy in the suit, and whatever documents were there in the plaintiff's power and possession, had already been filed. Hence no question of discovery of documents would arise. He has further submitted that before passing an order for discovery, the court must consider - (a) relevance of the document and (b) whether the document is really required for effective disposal. He has also submitted that the trial court has committed error in this behalf. He has also submitted that the revision application is bound to be allowed.

8:2 The learned advocate for the petitioner has also submitted that the plaintiff has not given any cogent evidence and convincing reason as to why he has filed an application dated 19th August, 1999.

9. Mr.Dagli, learned advocate for Mr.Y. S. Lakhani, learned advocate for the respondent No.1 has submitted that this revision application raise a pure question of law in the matter and it is a question relating between agents of LIC and LIC. He has also submitted that the respondent No.1 who is the original plaintiff has challenged the termination order termination of agency. The suit was at the stage of evidence and during the course of deposition of Manager of the Corporation who is examined at Ex.91 certain documents are referred which will directly throw light on the issue involved in the matter. The said documents are also in possession of the Corporation. It was further submitted that in the said deposition of Shri Rathod it

has been come on record that the insurance of Arunkumar Tripathi of previous policy nature. It was also admitted in the case of previous policy it is necessary to call for instruction from the earlier branch and particular abstract from the Branch is also required to be called for. As the same is come during the course of deposition when witnesses is in the witness box and he being Manager of the Corporation to see the situation, the prayer was made before this Court to bring the said documents on record and these documents is in possession of the Corporation is also undisputed fact. He has further submitted that the same documents which are sought for has come to the notice during the course of deposition of witness - Dr.Mukesh Brijmohan Bansal and as the same is directly throw light on the issue involved in the matter and if the said documents are nothing to the cause to the otherside; on the contrary the respondent No.1 can put up his case with materials and documents.

10 In support of his contentions, he has relied upon Order-11, Rule-12 of the Code of Civil Procedure, those documents can be examined. Order 11, Rule 12 of the Code of Civil Procedure which reads as follow :-

"Order 11 Rule 12 - Discovery of documents/letters, resistance, as to production merely on ground of confidentiality, no sufficient, no reasons assigned as to nature of confidentiality discovery of letters order.

10:1 He has also relied upon the judgment, in the case of Shri M. L. Sethi v/s. R.P. Kappor, reported in AIR 1972 S.C. 2379. The Hon'ble Supreme Court has observed as under :-

"Held the documents sought to be discovered need not be admissible in evidence in the enquiry or proceedings. It is sufficient if the documents would be relevant for the purpose of throwing light on the matter in controversy. Every documents which will through any light on the case is a document relation to a matter of dispute in the proceedings, though it might not be admissible in evidence. In other words a document might be in admissible in evidence yet it may contain application which may either directly or indirectly enable the party seeking discovery either to defend its case or damage adverse case or which may lead to a trial of enquiry which may have either of these two consequences."

10:2 In the above referred decision the Hon'ble Supreme Court in the case of Gopal Krishnaji v. Mohmed Haji Latif reported in AIR 1968 SC 1413. The Hon'ble Supreme Court has observed as under:-

> "irrespective of the doctrine of burden of proof, it is always incumbent on the part of the party in whose possession the documents are, to produce the same. Here, when the documents are in possession of the Corporation and the suit is yet to be decided on merits, there was no reason for the court to reject such application..."

10:3 He has also relied upon another judgment in the case of Ujval Products v/s. Rajkot Municipal Corporation, reported in 1995 (1) GLH (UJ) 14, wherein it has been observed as under :-

> "Order 11, Rule 12 - Application for production of documents during pendency of appeal, party in possession of the documents must produce the same."

10:3A The learned advocate for the respondent has also relied upon the judgment of this Court in the case of Mrs.Kamila Bros. & Co. v/s. State of Gujarat, reported in AIR 1992 (Gujarat) 138. This Court has observed as under :-

> "In the above referred case it was held by this Hon'ble Court that merely stating that the nature of document is confidential documents is no proper ground for not production of documents. It was also observed that no specific or particular privilege in respect of the letter in question have been claimed by the defendants and that there was no claim or contentions on the part of document disclosure would be prejudicial to public interest or to national security and or to oppose to public policy or detrimental to his interest. Held that merely by labeling the letters in question as "confidential letters" the same cannot be excluded from the purview or Order 11, Rule 12 of Civil Procedure Code."

10:4 After relying upon the aforesaid decisions, the learned advocate for the respondent No.1 has submitted that as in the present case also the documents which were sought for is in possession of the Corporation, the aid fact is not denied. During the course of deposition the

necessity of documents is revealed; hence the trial court has rightly granted discovery as sought for an in view of the same Revision Application preferred by the Corporation being aggrieved by the said order passed by the trial Court is required to be rejected in limine. The learned advocate for the respondent No.1 has also submitted that the relevancy of document is also made clear by the trial Court while granting the application for discovery by his well founded reasons and order. The specific questions which was put to the witness during the deposition is also taken into consideration by the Court and hence, the application of discovery is partly allowed by the trial Court hence, the Revision Application preferred by the other side is wholly misconceived and the same is required to be dismissed in limine as no error much less than the jurisdictional error pointed out in the order passed by the trial Court.

11. I have considered the submission and record of the case, the provisions of law as well as two judgments and orders cited by the learned counsel in this behalf. I have also gone through the records of the case and the application and reply filed by the petitioner Life Insurance Corporation of India in this behalf. In my view, the revision application ought to have allowed and the judgment and order of the learned Judge dated 26th November, 1999, wherein the learned Judge has directed defendant No.1 to produce the certain documents are required to be quashed and set aside. In my view, the documents which are sought for by the original plaintiff are not relevant for deciding the controversy raised between the plaintiff and defendant No.1. In my view, both the orders of the High Court which has been relevant, the learned counsel for the petitioner squarely applies in this case. This Court has rejected the revision application and did not allow the production of the documents that decision squarely applies in this case.

12. I have also considered the contentions raised by the respondent No.1 and decision cited by him in this behalf. In my view, before giving a direction to a party to make discovery of document in his possession or for production of document, the Court has to be satisfied that the document in question is relevant for proper adjudication of the matter involved in the suit. The privilege vested in a party to the suit by the provisions under Order XI, rules 12 and 14 is not intended to enable him to cause a roving enquiry to fish out information which may or may not be relevant for disposal of suit.

In my view, the original plaintiff - respondent No.1 herein has failed to show that the contents of the document would throw light on the subject-matter of the suit. In my view, the enquiry and the demand of the documents have made by the plaintiff - respondent No.1 herein is likely to be utilized for harassing the other party (L.I.C.) instead of helping proper adjudication in dispute in the case. In my view, therefore, the contentions raised by the learned counsel for the appellant are required to be accepted and the contentions raised by the plaintiff - respondent No.1 is required to be rejected. The application of the plaintiff under order XI, rule 12 of the Code of Civil Procedure is required to be rejected and the present Civil Revision Application is to be allowed. In my view, the discovery is not necessary in the present suit. The plaintiff has also filed this application after long delay. He has not given any reason of delay in this behalf and, therefore, also the said application is required to be rejected in this behalf.

13. In my view, the submission made by the learned counsel for the petitioner, the present application is not free to enlarge the scope of the suit is well founded and learned Judge has failed to consider this aspect and, therefo
liable to be quashed and set aside. This Civil Revision Application is allowed. Rule is made absolute. No order as to costs.

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(vrpanchal)*